TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 924.

THE UNITED STATES, APPELLANTS,

vs.

HANNAH BODENHEIM, EXECUTRIX OF HENRY BODENHEIM.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 2, 1876

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1 United States Court of Claims.

Petition.—(*Filed Aug.* 1, 1868.)

HENRY BODENHEIM
vs.
THE UNITED STATES. } 3354.

To the honorable the judges of the Court of Claims:

Your petitioner, Henry Bodenheim, of the city and State of New York, respectfully states unto your honors:

That in the year 1863, your petitioner and Jonas Bodenheim and Judor Loeb, then doing business under the name and style of Henry Bodenheim & Co., (the said Jonas Bodenheim and Judor Loeb having since become deceased, leaving petitioner the sole surviving partner,) at Vicksburg, Miss., purchased of one Robert G. Johnson, of Yazoo County, in said State, one hundred and forty-seven bales of cotton, then being on said Johnson's plantation in said county; and also, in the same year, purchased of one Thomas Gale, of said Yazoo County, thirty-six bales of cotton, then being on the premises of said Gale; and which said lots of cotton were permitted to remain upon the premises of said Johnson and Gale, until petitioner and his said partners could bring the same to Vicksburg; and for the purpose of bringing the said cotton, with other cotton owned by them, a permit was granted by Wm. P. Mellen, supervising special agent of the Treasury Department, which permit bore date October 14, 1863, and extended for thirty days from the date thereof, which permit was renewed by endorsements thereon, from month to month, the last renewal thereof being dated February 14, 1864, and extending the time for such permit for thirty days therefrom.

2 Petitioner further states that in the month of February, 1864, an expedition was organized under the command of Colonel J. H. Coates, of the 11th Regiment of Illinois Volunteers, which proceeded up the Yazoo River, and seized and carried from the said plantations of said Johnson and Gales, the said cotton so belonging to said Henry Bodenheim & Co., and transported the same to Vicksburg, where the same was turned over to the post quartermaster of that post, by whom the same was, as petitioner is informed and believes, transferred to some Treasury agent, and sold, and the proceeds thereof paid into the Treasury of the United States. But to what Treasury agent said cotton was so transferred petitioner cannot state, nor the amount of such proceeds; but petitioner alleges that the said cotton was then reasonably worth the sum of two hundred and fifty dollars ($250.00) per bale, and in the aggregate for said one hundred and eighty-three bales, the sum of forty-five thousand seven hundred and fifty dollars ($45,750.)

Petitioner therefore presents this his claim for the proceeds of said cotton, under the act of March 12, 1863.

Petitioner further states that Robert G. Johnson has filed his petition in said court, for the proceeds of one hundred and forty-nine bales of cotton, and which petition is now pending, and which, as petitioner believes, embraces the cotton so purchased by petitioner and his said partners, of said Johnson, and therefore prays that this petition may be considered and treated as an interpleader in said cause to the extent of said one hundred and forty-seven bales.

Petitioner further states that both he and his said partners have always been loyal to the Government of the United States, and never in any manner voluntarily aided, abetted, or gave encouragement to the late rebellion against the Government, and that petitioner is now the sole

owner of said claim, and is alone entitled to the proceeds of said cotton. Wherefore he prays judgment for the same.

J. J. McCARTY,
Atty. for Claimant.

3 STATE OF NEW YORK,
County of New York, ss:

Personally appeared before me, Henry Bodenheim, of the city and county of N. York aforesaid, who, being duly sworn, deposeth and saith: That he is the claimant named in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that he is justly entitled to the proceeds of said cotton, after allowing all just credits and offsets; and that the facts as stated in said petition he believes to be true.

HENRY BODENHEIM.

Subscribed and sworn to before me this 28th day of July, A. D. 1868.

J. B. NONES,
Notary Public of the State of N. Y.

4 In the Court of Claims of the United States.

HENRY BODENHEIM
vs.
THE UNITED STATES. } No. 3480. (Filed Aug. 19, 1868.)

To the honorable the judges of the Court of Claims:

Your petitioner, Henry Bodenheim, of the city and State of New York, respectfully represents to your honors:

That, in the year 1863, petitioner and Jonas Bodenheim and Judor Loeb composed a mercantile firm doing business under the name and style of Henry Bodenheim & Co., at New Orleans, La., of which firm petitioner is the sole survivor, the said Jonas Bodenheim and Judor Loeb having since become deceased.

That the said Henry Bodenheim & Co. had funds in the several banks in New Orleans aforesaid, as follows: In the Merchants and Traders' Bank of New Orleans, two thousand dollars, represented by a
5 check drawn upon said bank by the Columbus Life and General Insurance Company, which check was properly endorsed to said Bodenheim & Co. Also in the Lo'isiana State Bank of New Orleans, the sum of two thousand five hundred and fifty dollars, represented by two checks drawn by the Commercial Bank of Alabama upon said State bank, which was the property of said firm. Also, in the Bank of Louisiana, the sum of two thousand one hundred & three $\frac{76}{100}$ dollars, which sum was represented by a check drawn thereupon by one A. V. Davis, and which was the property of said Bodenheim & Co., which said checks were seized by the military authorities under the orders of General N. P. Banks, and the money so represented by said checks was collected from the said several banks upon which they were drawn, amounting to the sum of $6,653.76; but petitioner is unable to state what
6 disposition was made of such funds, and whether or not the same was turned over by the military department to the officers of the Treasury Department as captured property, but believes that the same has been accounted for and returned to the Treasury, and therefore respectfully asks this court to request from the Secretary of War information respecting the disposition made of such funds, in order that the petitioner may file a more complete petition. Petitioner further states that he presented his claim for such money to the Secretary of War,

but without success. Wherefore petitioner prays that the foregoing information may be asked for, and that, when received, he may be permitted to amend this his petition, in accordance with the facts as may be established from such information.

A. L. MERRIMAN,
Atty. for Petitioner.

7 DISTRICT OF COLUMBIA,
City & County of Washington, ss:

A. L. Merriman, attorney for said petitioner, being first duly sworn, deposes and says that, as he believes, no transfer or assignment has been made of said claim, or any part thereof; that the United States are justly indebted to petitioner in the amount in said petition claimed, over and above all credits and offsets; and that the facts as stated in said petition are true.

A. L. MERRIMAN.

Subscribed and sworn to before me this 19th day of August, 1868.
[SEAL.] EDM. F. BROWN,
Commr. of the Court of Claims.

8 In the United States Court of Claims. December term, A. D. 1868.

HENRY BODENHEIM
vs.
THE UNITED STATES. } No. 3354.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant on file herein; and, not confessing the same, or any part thereof, do hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States are indebted to said claimant in the sum of forty-five thousand seven hundred and fifty dollars, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

And as to so much of said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against said Government, the said defendants deny the truth of said allegation, and call for proof thereof.

T. LYLE DICKEY,
Assistant Attorney-General.

Filed July 19, 1869.

9 In the United States Court of Claims, December term, 1873.

Perfected petition.—Filed Aug. 31, 1874.

HENRY BODENHEIM, SURVIVING PARTNER OF
Henry Bodenheim & Co.,
vs.
THE UNITED STATES. } No. 3480.

The petitioner, Henry Bodendeim, comes now and files this his amended petition, and alleges:

First. That he is a citizen of the United States.

Second. That in the years 1862-'3, himself and Jonas Bodenheim and Jorden Loeb were partners, under the name of Henry Bodenheim & Co., at the city of New Orleans, and the petitioner is the only surviving

member of said partnership, and as such survivor he brings this action. That in the year aforesaid the said partnership had funds in the banks of New Orleans, as follows: In the Mechanics and Traders' Bank of said city the sum of two thousand dollars, in a check drawn upon said bank by the Columbus Life and General Insurance Company, to the order of Miller & Bartri, and indorsed by them to the said firm of Henry Bodenheim & Co. Also, in the Louisiana State Bank of New Orleans, in two checks drawn by the Commercial Bank of Alabama on said State Bank, to the order of Miller & Bartri; one check, or draft, for fifteen hundred and fifty-six dollars, ($1,556,) and one for one thousand dollars, ($1,000,) the said drafts, or checks, belonging to the said firm of Henry Bodenheim & Co. Also, a draft drawn by one A. F. Davis, on the Bank of Louisiana, for $2,103.76, the property of said firm; in all, the sum of six thousand six hundred and fifty-nine dollars and seventy-six cents, ($6,659.76.)

Third. That Major-General Benjamin F. Butler, commanding
10 the Department of the Gulf, as such commander, and by virtue of his military authority, and on behalf of the United States, seized said checks and drafts, and on the order of the said Butler, or of General N. P. Banks, the said draft or check for $1,556.00 was paid about the 27th day of August, 1863, to Capt. McClure, assistant quartermaster. Also, upon a like order, the said draft or check for $1,000 was paid at the same time to the same person. Also, the draft for $2,000 was paid upon the like order to the said McClure, about September 11, 1863, upon order number 202. Also, the draft or check for $2,103.76 was paid upon a like order, March 24, 1863, to some agent of the Government of the United States unknown to said petitioner.

Your petitioner further states that he is unable to detail more definitely the disposition of said funds so collected by the officers and agents of the United States, by virtue of their said agency and official position, but he believes the said sums were paid into the Treasury of the United States, or were duly accounted for as money properly expended on behalf of the said Government of the United States, and he prays that a statement may be required from the War Department of the disposition of such proceeds.

Fourth. Your petitioner avers that said drafts and checks, or the proceeds of the same, were never abandoned by said firm, nor by said petitioner, nor were the same forfeited, nor has there ever been any condemnation nor forfeiture of the same adjudged, nor are proceedings for such purpose now pending, nor have the same ever been instituted.

Fifth. Your petitioner further avers that the proceeds of said drafts and checks are now held by the United States as trustee for your petitioner, as the survivor of said firm of Henry Bodenheim & Co.; and that an implied contract has arisen therefrom to pay the same amount to your petitioner in said right as survivor of said members of said partnership, to wit, the said sum of six thousand six hundred and fifty-nine $\frac{76}{100}$ dollars, for which sum he demands judgment.

A. L. MERRIMAN,
BARTLEY, RAY & JENNER,
Attorneys for Petitioner.

11 COUNTY OF WASHINGTON,
District of Columbia, ss:

Personally appeared before me, the undersigned, a notary public in and for said county and district, S. Eberle Jenner, to me well known, and, being duly sworn according to law, says that the statements contained in the foregoing amended petition are true, as he believes, and

that no assignment or transfer of said claim or any part thereof has ever been made, and that the said claimant is justly entitled to the amount claimed, after allowing all just credits and offsets.

S. EBERLE JENNER,
Attorney in fact for Henry Bodenheim.

Sworn to, signed, and acknowledged before me this 20th August, 1874.

[SEAL.] E. McB. TIMONEY.

Claimant's P. O., Vicksburg, Miss.

12 In the United States Court of Claims.

HENRY BODENHEIM *vs.* THE UNITED STATES. } No. 3354. (Filed May 28, 1875.)

And now comes Bartley & Jenner, attorneys for claimant herein, and suggest the death of Henry Bodenheim, the claimant, and move the court to allow all future proceeding' in this case to be had in the name of Hannah Bodenheim, the duly appointed and qualified executrix, as is fully shown by the annexed certificate of her appointment as such executrix.

BARTLEY & JENNER,
Attorneys for Claimant.

Allowed May 28, 1875.

By the court.

13 In the Court of Claims.

HANNAH BODENHEIM, EXECUTRIX OF HENRY Bodenheim, dec'd, *vs.* THE UNITED STATES. } 3354 and 3480.

At a Court of Claims, held at the Capitol, in the city of Washington the 31st day of May, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Hannah Bodenheim, as executrix of Henry Bodenheim, deceased, do have and recover of and from the United States the sum of fifteen thousand nine hundred and seventy-nine dollars fifty cents, ($15,979\frac{50}{100}$,) being the net proceeds of ninety bales of cotton, at $177\frac{55}{100}$ per bale.

By the court.

A true copy of record.

14 In the Court of Claims of the United States, Dec. term, 1874.

HANNAH BODENHEIM, EXECUTRIX OF HENRY Bodenheim, dec'd, *vs.* THE UNITED STATES. } Nos. 3354 and 3480.

From the judgment rendered in the above-entitled cause, on May 24, 1875, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of July, 1875, make application for, and give notice of, an a peal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed August 19, 1875.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

15 United States Court of Claims.

SUNDRY COTTON-CASES.

Order of the court made May 24, 1875.

On the motions to confirm the reports of Special Commissioner Eveleth, bearing date, respectively, the 2d day of March, 1875, and the 6th day of April, 1875, and the 21st day of April, 1875, after hearing counsel for the respective claimants and for the defendants, and after due consideration of the evidence offered in all of such cases—

It is ordered and directed that the said reports be, and are hereby amended in the following particulars:

1. The first fund, consisting of Vicksburgh and Natchez cotton, intermingled so that the identity thereof has been destroyed, as described in the report, will stand at the sum of $948,313.30. The number of bales contributed to this fund by capture, and which it represents, will stand at 5,341 bales, and the price per bale which parties should recover will stand at $177.55 per bale.

The cases of—
James J. Persons, assignee, vs. The United States, (No. 3372,)
Daniel D. Dohan vs. Same, (No. 3557,)
Eliza A. Cochran vs. Same, (No. 3508,)
William E. Hall vs. Same, (No. 3423,)
Mary E. Bledsoe, guardian, vs. Same, (No. 3477,)
Martha Crane vs. Same, (No. 3554,)
are stricken out of the report and remanded to the general docket, with leave to both parties, claimant and defendant, to take further evidence, but upon condition that if any of the cases hereafter be brought to trial, and the claimant recovers out of the funds set forth in the report, the claimant, before judgment, shall pay to the commissioner his fees and expenses at the rate hereinafter prescribed for claimants whose cases are now prosecuted to judgment.

The cases of—
A. Perryman vs. The United States, (No. 3231,)
Anson Wolcott vs. Same, (No. 3345,)
Susan Bolls vs. Same, (No. 3193,)
Mrs. V. O. West vs. Same, (No. 3198,)
Sylvia A. Perry vs. Same, (No. 3255,)
T. C. A. Dexter vs. Same, (No. 3465,)
are remanded to the commissioner, but on condition that if it hereafter appear that they are entitled to relief out of the two funds now disposed of, the petitions shall be dismissed, and they are stricken out of this report.

In the cases of—
James A. Fox vs. The United States, (No. 3236,)
Jesse B. Ferguson vs. Same, (No. 3258,)
E. H. Pace vs. Same, (No. 3468,)
John Harod vs. Same, (No. 3472,)
Mrs. A. Smith vs. Same, (No. 3178,)
J. E. Fore vs. Same, (No. 3256,)
Joseph C. Jones vs. Same, (No. 3504,)
16 Cornelius T. Cunningham vs. Same, (No. 3370,)
Solomon Galinger vs. Same, (No. 3440,)
the report of the commissioner is confirmed, and judgment will be entered dismissing the petitions of the respective claimants.

In the case of Mrs. Nanette Switzer (late Abell) vs. The United

States, (No. 3169,) the report of the commissioner is confirmed as to 73 bales of the cotton claimed, and the remaining 27 are found on the evidence to have been the property of the confederate government at the time of capture, and are now adjudged to be the property of the United States.

In the case of James A. Hutchinson vs. The United States, (No. 3499,) the report of the commissioner is confirmed as to 42 bales of the cotton claimed, and the remaining 23 bales are found on the evidence to have been the property of the confederate government at the time of capture, and are adjudged to be the property of the United States.

In the case of Joel H. Willis's administrator vs. The United States, (No. 3186,) the report of the commissioner is not confirmed, and the claimant is found on the evidence not to have proved the capture of the cotton sought to be recovered, and judgment will be entered dismissing the petition.

In the case of Seth H. Kellogg vs. The United States, (No. 3229,) the report is not confirmed as to the title of the claimant to the cotton sought to be recovered, and the evidence relied upon by the commissioner is excluded as incompetent. The case will be remanded to the general docket, with leave to the parties to give further evidence as to the title of the claimant and his vendors, John Buckingham & Co., to the cotton in suit, upon condition that if the case be hereafter brought to trial the claimant shall before judgment pay to the commissioner his fees and expenses at the rate hereinafter provided.

And it is further ordered that in the following cases the report of the commissioner be confirmed and judgment be entered in favor of the respective claimants for the quantity of cotton reported by the commissioner at the rate fixed by the foregoing amendments to his report:

FIRST FUND, AT $177.55 PER BALE.

Robert G. Johnson vs. The United States, (No. 2539,) 149 bales.
Ellen D. Balcheldor vs. Same, (No. 3150,) 51 bales.
John H. Newman vs. Same, (No. 3162,) 50 bales.
E. K. McLean vs. Same, (No. 3170,) 21 bales.
Thomas Y. Berry, administrator, vs. Same, (No. 3171,) 149 bales.
Juliet Glass vs. Same, (No. 3174,) 18 bales.
J. Reese Cook vs. Same, (No. 3175,) 40 bales.
Thomas A. Marshall vs. Same, (No. 3176,) 22 bales.
Richard Taylor vs. Same, (No. 3179,) 6 bales.
Thomas Kidd, guardian, vs. Same, (No. 3182,) 64 bales.
James Stewart vs. Same, (No. 3183,) 70 bales.
Charlotte Spear vs. Same, (No. 3184,) 70 bales.
Mary P. Marye's administrator vs. Same, (No. 3188,) 45 bales.
Thomas Kidd vs. Same, (No. 3191,) 480 bales.
Hiram Harrison vs. Same, (No. 3192,) 200 bales.
Duff Green vs. Same, (No. 3194,) 19 bales.
J. B. Brabston vs. Same, (No. 3196,) 32 bales.
Sarah Cowan vs. Same, (No. 3197,) 48 bales.
E. B. Willis vs. Same, (No. 3199,) 40 bales.
Emma J. Jones vs. Same, (No. 3293,) 100 bales.
Henry Bodenheim vs. Same, (Nos. 3354 & 3480,) 90 bales.
17 Alfred W. Brien vs. Same, (No. 3393,) 40 bales.
John L. Hebron's assignee vs. Same, (No. 3399,) 30 bales.
J. W. Maybins, assignee, vs. Same, (No. 3400,) 400 bales.
Armstead Burwell vs. Same, (No. 3419,) 118 bales.

John Willis vs. Same, (No. 3421,) 125 bales.
Wm. E. Hall vs. Same, (No. 3424,) 300 bales.
James Meagher vs. Same, (3439,) 69 bales; and for 45 bales specifically traced, $14,759.90.
Mary W. Thomas vs. Same, (No. 3466,) 112 bales.
Thomas H. Jett vs. Same, (No. 3470,) 25 bales.
George Hawkins vs. Same, (No. 3473,) 15 bales.
James J. Cowan, administrator, vs. Same, (No. 3474,) 120 bales.
Benjamin Harwood vs. Same, (No. 3498,) 75 bales.
Ann Maria Ragsdale vs. Same, (No. 3501,) 100 bales.
Alexander Hutchinson vs. Same, (No. 3510,) 130 bales.
John R. McAlpine vs. Same, (No. 3511,) 100 bales.
Isaac R. Wade vs. Same, (No. 3545,) 21 bales.
Clarissa Young vs. Same, (No. 3550,) 116 bales.
Ann Eliza Routh vs. Same, (No. 3413,) 75 bales.

THIRD FUND, AT $111.97.

E. E. Mount, administratrix, vs. The United States, (No. 3165,) 5 bales.
Frederick A. Metcalf, administrator, vs. Same, (No. 3539,) 55 bales.
Robert M. Douglas et al. vs. Same, (No. 9740,) 1,457 bales.
Wm. F. Smith vs. Same, (No. 3486,) 15 bales.

And it is further ordered that the engrossed and consolidated copy of the reports of the commissioner as amended by this order, filed herewith, stand as the findings of fact of the court.

And it is further ordered that there be allowed and paid to the commissioner by the several parties for whom judgment is now directed, for his fees and expenses, including those of Enoch Totten, esq., his legal assistant, the sum of $6,000, to be apportioned pro rata among the said several claimants, according to the amounts of their respective judgments as hereby directed. That $2,000 of said allowance be paid by the commissioner to his said assistant, Enoch Totten, esq., and that the entry of judgment in each case will be suspended until the claimant produces the commissioner's receipt for the party's ratable share of the allowance to the commissioner.

By the court.

18 HANNAH BODENHEIM, EX'X OF HENRY Bodenheim, dec'd, *vs.* THE UNITED STATES. } 3354 and 3480.

Findings of fact and conclusions of law.

CONSOLIDATED REPORT OF SPECIAL COMMISSIONER.

In pursuance of the order of this court, dated on the 4th day of June, 1873, appointing me a special commissioner for certain purposes therein set forth, I submit the above-entitled causes and the following report, embracing transactions in regard to cotton captured in the State of Mississippi during the years 1863, 1364, and 1865, the records not exhibiting any captured in the year 1862.

During the years 1863, 1864, and 1865, fourteen thousand three hundred and thirty-five (14,335) bales of cotton were captured and taken from the owners in the State of Mississippi. The parcels of different owners were, except as hereinafter specifically stated, so that the identity of each parcel was destroyed and the property of each owner could not be traced. While in transitu large quantities were stolen, destroyed,

taken for military purposes, and otherwise lost from the mass. The remainder, amounting to twelve thousand seven hundred and twenty-two (12,722) has been accounted for in the accounts rendered by William P. Mellen, supervising special agent of the Treasury Department, and by Captains A. R. Eddy and G. L. Fort, officers of the Quartermaster's Department, viz:

		Bales.
Mr. Mellen's accounts		9,664
Captain Eddy's accounts		947
Captain Fort's accounts		2,111
In all		12,722
Of which there were released in kind to various persons	2,100	
There were burned, lost, or otherwise disposed of, as is shown in a tabulated statement marked Exhibit No. 1, and appended hereto	259	
		2,359
And the number of bales sold is:		
By Mr. Mellen	7,439	
By Captain Eddy	813	
By Captain Fort	2,111	
		10,363
Out of the above proceeds there were nominally released, as hereinafter stated, by the officers of the United States to various persons claiming to have been the owners of some of the cotton sold	1,497	
The number of which the net proceeds were paid for collecting portions of the cotton sold, is	139¾	
The number included in judgments entered in the United States Court of Claims, is	2,702	
		4,338¾
And the number, the net proceeds of which, including custom-house fees and internal-revenue tax, remain available to meet judgments of the Court of Claims, is		6,024¼

The proceeds derived from the 10,363 bales sold are—				
By Mr. Mellen	7,439	"		$2,295,933 66
By Captain Eddy	813	"		247,143 08
By Captain Fort	2,111	"		429,663 39
	10,363			2,972,740 13

The expenses charged against the same are—

By Mr. Mellen:		
Freight, &c	$207,346 44	
Custom-house fees	117,862 93	
Internal-revenue tax	26,746 24	
		$351,955 61
By Captain Eddy:		
Auctioneer's fees, &c		2,842 41
By the Treasury Department, as properly chargeable against proceeds of the sale by Captain Fort:		
Freight	$16,888 00	
Int. rev. tax	2,315 46	
		19,203 46

Of which the amount remitted on payment of judgments in the Court of Claims, is:			
19 In favor of Samuel Worthington's administratrix	$8,331 29		
In favor of Wm. W. Worthington	2,272 17		
		10,603 46	
Leaving as chargeable against the proceeds of the sale of 1,075 of the 2,111 bales sold.		8,600 00	
			363,398 02
The net proceeds in which charges for custom-house fees and internal-revenue tax are included are			2,609,342 11
And the like proceeds in which these charges are excluded are			$2,753,951 28
From out of such net proceeds officers of the United States have paid and there is otherwise involved—			
1. To various persons claiming to be owners of cotton so sold, the proceeds of 1,497 bales, amounting to		$408,200 80	
2. To various persons for collecting portions of the cotton sold		30,825 72	
3. Involved in appeal pending in the United States Supreme Court in the Elgee case		16,309 08	
4. The net proceeds due to 2,702 bales and involved in judgments entered in the United States Court of Claims amounts to		888,487 35	
5. The net proceeds due to 45 bales specifically traced are		14,759 90	
			1,358,582 85
And the balance in the Treasury available to payment of judgments in the Court of Claims is			1,395,368 43

By reference to said tabulated statement, marked "Exhibit No. 1," the above facts will be seen fully set out.

As to the 1,497 bales nominally released to the owners, the following facts are found: At various times after the sales of cotton, and while the proceeds were on deposit with the assistant treasurer of the United States, at Cincinnati, and were subject to the draft or order of the supervising special agent of the Treasury, persons would appear claiming to have been the owners of some of the cotton which had been sold, and produce affidavits to prove their title. On being satisfied of their loyalty, the Secretary of the Treasury would direct the supervising special agent to release to the applicant the proceeds of a specified number of bales, deducting therefrom the custom-house fees and internal-revenue tax. The special agent would thereupon pay to the applicant out of the moneys subject to his draft, as before stated, the amount

which he supposed represented the avails of the applicant's cotton, deducting, however, the custom-house fees and internal-revenue tax. But in making these estimates the special agent did not take into account the losses to which the mass of cotton had been subjected before it came into his hands. Consequently, while he nominally released the proceeds of a given number of bales, less the custom-house fees and internal-revenue tax, he really released the proceeds of a much larger number. Therefore, after the custom-house fees and internal-revenue tax had been deducted, there was released as representing 1,497 bales, the sum of four hundred and seven thousand six hundred and eighty-eight dollars and seven cents, ($407,688.07,) as above shown, giving an average of $272.33 per bale.

To arrange the cotton referred to, and the corresponding proceeds into funds, is a task of no little delicacy. There is so much uncertainty connected with the facts, and the various lots are so confused and intermingled, that it is only possible to approximate, and we are compelled to grope in the dark and separate the cotton into funds with such imperfect lights as we have before us. I have divided the cotton captured in Mississippi into eight separate funds, and in so doing have taken the cotton remaining on hand, only.

The cotton paid out for collecting, burned or lost, and released in kind, or in net proceeds, has been excluded from the various funds; but the cotton disposed of by the court has been included in the fund, except the cotton in controversy in the case of Woodruff, Bouchard & Elgee, and the funds arising therefrom. This case being undecided, on appeal, the property has been excluded from the funds.

In cases where the net proceeds of cotton were released by the Treasury agents to persons claiming to own them, the amounts assessed for custom-house fees and internal-revenue taxes were always retained by the Government. In this report such sums, so retained, have been considered and counted as a part of the fund.

20 FIRST FUND.

The most of the cotton included in this report was captured in the vicinity of Vicksburgh, Mississippi, and was transported to that city. From there it was shipped generally to Memphis, Tennessee, and thence to Saint Louis and Cincinnati, for sale.

The collection of cotton in that locality began in June, 1863, about the time the Army surrounded the city of Vicksburgh, and continued until about July, 1865. A very large quantity of captured cotton was used by the Army of the United States for defensive purposes in the vicinity of Vicksburgh. After the surrender of Vicksburgh, this cotton, or as much of it as could be saved, was collected and transported to Vicksburgh. The work of gathering cotton from the defenses around Vicksburgh continued until about the 1st of November, 1863, and after that date small quantities were received, and even as late as March, 1864, a few bales were dug out and brought in from those defenses.

The testimony shows that, during the strife in the counties surrounding Vicksburgh, the people were in the habit of concealing their cotton in swamps and forests to protect it from the torches of the confederates, and also from the hands of the Union Army. During the latter part of the year 1863, and during the year 1864, much of this concealed cotton was discovered by the military forces of the United States, and by the Treasury officials, and was seized and conveyed by them to Vicksburgh and to Natchez.

Neither the records of the Department, nor the depositions of witnesses filed in the various cases, enable me to determine how long the various lots of cotton remained in Vicksburgh before shipment to the North for sale. But I find that large masses of cotton were stored in warehouses and piled up on wharves in Vicksburgh for indefinite periods of time, and I am led to the belief that large quantities of cotton were retained in Vicksburgh many months before shipment to Memphis, Saint Louis, and Cincinnati.

I find that a large quantity of cotton was, immediately after seizure, sent to Natchez, but the greater part if not all of such cotton was reshipped, sooner or later, to Vicksburgh; at this point it was intermingled with the mass of cotton accumulated in that city, except as to lot 121, hereinafter mentioned.

I have, therefore, arranged the cotton shipped from Vicksburgh and Natchez, during the years 1863 and 1864, into one fund, and have called it the first fund, to answer the claims for cotton seized and sent to those two points during those two years. Two expeditions were sent up the Yazoo River, one in 1863, under General Herron's command, and the other in 1864, under the command of Colonel Coates. Both of these expeditions captured cotton, which was shipped down the Yazoo River to Vicksburgh, and I have, therefore, included it in the fund under consideration.

A small lot of cotton, consisting of fifteen bales, was brought to Memphis, by a steamboat, in August, 1863; of these, twelve bales were saved from burning at Perkins's Landing, and three picked up in the Yazoo River. This cotton undoubtedly was the property of the people residing in the vicinity of Vicksburgh, who contributed to cotton which forms the first fund, and I have, therefore, assigned the lot to said fund.

Some of the cotton captured in the vicinity of the railroad bridge over the Big Black River, in June, 1863, was conveyed on wagon-trains to Haines's Bluff; such cotton, I think, eventually went into Vicksburgh, and I have, therefore, included it in the first fund.

In every case where the evidence shows the seizure of cotton, and the shipment thereof to Vicksburgh or Natchez, during the years 1863 and 1864, I have recommended the payment of the allowance out of this fund. All of the cotton allowed to claimants out of this fund, except in two cases, was captured on and before the 1st day of March, 1864. In the two cases so excepted, the cotton was captured in July and September, 1864. In view of the great uncertainty as to the time of shipment from Vicksburgh, and the impossibility of tracing the cotton of the various claimants into specified lots, I deem this to be the only just method of distributing the fund.

I have prepared and filed herewith a paper, marked "Exhibit No. 2," showing the lots of cotton put into the first fund, the date of shipment; the judgments of the court, and the number of bales remaining available; to which reference is made.

After deducting the amounts recovered in judgments of the court heretofore rendered, and the amount released by the Treasury, there will remain a balance in the Treasury derived from cotton, which has been segregated as belonging to the first fund, amounting to $948,313.30, and this is designated for the purposes of this report as the first fund. The number of bales segregated as above and represented by this fund is 5,341, giving as the price per bale which should be recovered by claimants, $177.55.

21 FIRST FUND.

From the first fund must be deducted the following judgments of the

Court of Claims, and also the amount specifically traced in favor of James Meagher, that is to say:

Judgments:			
Michael Slattery	1	bale	$320 55
John A. Kline, administrator	560	bales	125,300 00
Clarissa Ashford	83	bales	23,589 43
Warren R. Dent	75	bales	17,923 90
Woodruff, Bouchard and Elgee	572	bales	366,170 83
J. W. Vick	17	bales	1,356 10
Thomas P. Rubey	8	bales	1,210 48
J. B. Christian's administrator	20	bales	7,685 75
Benj. Rouch's executor	69	bales	8,907 69
	1,405		552,464 73
Specifically traced and allowed to James Meagher	45	bales	14,759 90
Loss to this fund from custom-house fees and internal-revenue tax, lot 136			512 73
	1,450		567,737 36
Whole number of bales allotted to this fund	5,078¼		1,516,050 66
Deduct judgments as above, special allowance to Meagher, and loss to fund	1,450		567,737 36
Available	3,628¼	bales	948,313 30

HENRY BODENHEIM *vs.* THE UNITED STATES. } Nos. 3354 and 3480.

The petitioner in this cause claims, as the surviving partner of the firm of Henry Brodenheim & Co., the proceeds of one hundred and eighty-three bales of cotton.

The proof shows that the said firm of Bodenheim & Co., some time about February, 1863, through their agent, purchased from one Robert G. Johnson a large quantity of cotton, which remained stored on the plantation of said Johnson, in Yazoo County, Mississippi. And that about thirty bales of cotton had been purchased from one Thomas Gale, by the said firm, through the same agent, which remained in the same neighborhood. In the month of February, 1864, an expedition, under the command of Col. James H. Coates, Eleventh Illinois Infantry, seized ninety bales belonging to the said firm, which cotton was shipped to Vicksburg, when it was turned over to an assistant quartermaster of the Army.

The claimant is entitled to recover the proceeds of ninety bales of cotton, at the average price per bale, payable out of the first fund.

90 bales of cotton, at $177.55 per bale $15,979 50

Respectfully submitted to the honorable Court of Claims by

E. EVELETH,
Commissioner.

Washington, D. C., March 2, 1875.

23 *Exhibit No. 2, with second report of special commissioner.*

FIRST FUND.

Cotton shipped from Vicksburgh and Natchez during the years 1863 *and* 1864, *and from Haines's Bluff and Perkins's Landing, in August,* 1863.

Lot.	Shipped. From—	To—	When.	Bales.		Amount available.
			1863.			
92	Vicksburg	St. Louis	July	46		$8,501 62
109	"	Memphis	" 30	12½		4,624 64
				666		164,458 00
				5 parts		
G.		St. Louis	August	507 &		123,678 24
				61		3,548 71
						15,566 19
				10		2,009 43
108	Haine's Bluff	Memphis	" 6			1,754 51
120	Vicksburgh	St. Louis	"	284		78,702 81
118	Perkins' Landing	Memphis	" 20	15		3,279 22
N. U. S. R.	Vicksburg	St. Louis	" 30	100½		22,844 84
121	"	Memphis	" 31	1,362		387,095 25
351						
146	"	Cinn. & St. Louis	" 31			3,884 95
V. 6						
147	"	"	" "	45		14,759 90
145	"	"	" "			671 63
144	"	"	" "	23		6,785 06
V. 9	"	"	" "	37		7,921 34
V. 1	"	St. Louis	Sept. 4	68		8,301 73
140	"	"	" 19	36¾		10,613 48
V. 12	"	"	Oct. 12			68 22
V. 11	"	"	" "			128 79
V. 3	"	"	" 16	21		5,008 46
V. 8	"	"	" "	35		8,122 30
V. 10	"	"	" 18	552		117,574 06
V. 14	"	"	" 27	27		4,568 69
V. 17	"	"	" "	6		890 19
			1864.			
V. 32	"	"	March 3	5		816 94
			1863.			
V. 7	"	"	Oct. 16	1		342 24
152	"	Memphis	" 20			980 10
V. 5	"	St. Louis	" 16			120 47
158	"	"	" 23	4		1,240 20
V. 24	Natchez	Vicksburg	" "	12		2,323 61
V. 46	Vicksburg	Cincinnati	Oct.			312 42
V. 35	"	"	Dec.	5		367 75
V. 25	"	"	" 23	17		2,318 62
V. 26	Natchez	"	" "	3		570 22
V. 27	"	"	" "	2		313 91
			1864.			
N. 3	"	St. Louis	Jan'y 29	47½		11,890 74
N. 7	"	"		45⅝		10,590 02
180	Vicksburg	Memphis	Feb'y	4		1,181 52
			1864.			
V. 33	Vicksburgh	Cincinnati	M'ch 3	13		1,494 69
V. 36	"	"	"	75		17,923 90
V. 38	"	"	" 2	95½		25,426 18
N. 10	Natchez	"	Apr. or May			3,497 52
N. 11	"	"	June 10	10		6,286 03
N. 12	"	St. Louis	"	572		366,170 83
V. 45	Vicksburgh	"	Nov.	3		44 76
195	"	Memphis	Dec.			402 30
V. 51	"	"	"	5		1,293 41
V. 52	"	"	"	5		1,499 11
V. 49	"	"	"	8		2,379 62
V. 50	"	"	"	11		2,379 98
53	"	"	"	17		1,738 24
N. 14	"	"	"	17		6,800 44
			1863.			
V. 15	"	St. Louis	Oct. 27			313 70
74	Chickasaw Bayou	Memphis	June	180		40,668 93
				5,078½		1,516,050 66

Judgments:		
Michael Slattery	1 bale	$320 55
John A. Kline, administrator	560 bales	125, 300 00
Clarissa Ashford	83 "	23, 589 43
Warren R. Dent	75 "	17, 923 90
Woodruff, Bouchard and Elgee	572 "	366, 170 83
J. W. Vick	17 "	1, 356 10
Thomas P. Rubey	8 "	1, 210 48
I. B. Christian's adm'r	20 "	7, 685 75
Benj. Roach's ex'r	69 "	8, 907 69
Specifically traced	45 "	14, 759 90
Loss to this fund		512 73
	1, 450	567, 737 36
Available	3, 628¼ bales	$948, 313 30

24 *Exhibit No.* 10, *with second report of special commissioner.—Schedule of cases in which allowances are made.*

No.	Names of claimants.	Place of capture.	Date of capture.	Shipped to—	Bales claimed.	Bales allowed.	Amount allowed.
	PAYABLE OUT OF FIRST FUND.						
3150	Ellen D. Batchelor	Warren County	June, 1863	Vicksburg	51	51	9, 813 42
3162	John H. Newman	" "	" 15, "	"	50	50	9, 621 00
3175	J. Reese Cook	" "	" "	"	40	40	7, 696 80
3184	Charlotte Spear	Hinds County	May, "	"	70	70	13, 469 40
3194	Duff Green	Warren County	June, "	"	19	19	3, 655 98
3197	Sarah Cowan	" "	" "	"	48	48	9, 236 16
3199	E. B. Willis	" "	" "	"	40	40	7, 696 80
3400	John W. Maybin	" "	May or June, "	"	402	400	76, 968 00
3419	A. Burwell	" "	May, "	"	118	118	22, 705 56
3470	Thomas H. Jett	" "	June, "	"	25	25	4, 810 50
3474	J. J. Cowan, adm'r	" "	June, "	"	129	120	23, 090 40
3511	Jno. R. McAlpine	Claiborne County	May or June, "	"	100	100	19, 242 00
3182	Thomas Kidd, guardian.	Hinds County	" " "	"	64	64	12, 314 88
3191	Thomas Kidd	" "	May, "	"	480	480	92, 361 60
3510	Alex. Hutchison	Claiborne County	June, "	"	130	130	25, 014 60
3176	Thos. A. Marshall	Warren County	July, "	"	30	22	4, 232 24
3399	John L. Hebron	" "	July or Aug., "	"	30	30	5, 772 60
3473	George Hawkins	" "	July, "	"	96	15	2, 886 30
3421	John Willis	Yazoo County	" "	"	125	125	24, 052 50
3192	C. H. Harrison	" "	" "	"	228	200	38, 484 00
3393	A. W. Brien	Warren County	July or Aug., "	"	40	40	7, 696 80
3174	Juliet Glass	" "	Aug. 4, "	"	18	18	3, 463 56
3179	Richard Taylor	" "	" "	"	25	6	1, 154 52
3439	James Meagher	Hinds County	Aug. or Sep., "	"	114	69	13, 276 98
3188	Mary P. Marye	Sunflower County	July, 1863	Vicksburg	45	45	8, 658 90
3501	Maria Ragsdale	" "	" "	"	100	100	19, 242 00
3466	Mary W. Thomas	Yazoo County	" "	"	112	112	21, 551 04
3196	J. B. Brabston	Warren County	June, "	"	32	32	6, 157 44
3424	Wm. E. Hall	Claiborne County	Jan'y 18, 25, 1864	"	317	300	57, 726 00
3545	Isaac R. Wade	" "		"	21	21	4, 040 82
3550	Clarissa Young	" "	Feb'y 20, "	"	116	116	22, 320 72
3554	Martha Crane	" "	" " "	"	235	235	45, 218 70
3170	E. K. McLean	Carroll County	" 14, "	"	21	21	4, 040 82
3480½ 3554½	Henry Bodenheim	Yazoo County	" "	"	183	90	17, 317 80
3557	Dan'l J Dohan	Claiborne County		"	138	138	26, 553 96
3498	Benj. Harwood	" "	March 1, "	"	75	75	14, 431 50
3499	James A. Hutchinson	" "	" "	"	65	65	12, 507 30
3183	James Stewart	Jefferson County	March, "	Natchez	70	70	13, 469 40
3293	Emma J. Jones	Warren County	September, "	Vicksburg	100	100	19, 242 00
3171	Thomas Y. Berry	Claiborne County	Feb'y 28, "	Natchez	149	149	28, 670 58
3229	Seth H. Kellogg	" "	July 16, "	"	714	714	137, 387 88
2539	Rob't G. Johnson	Yazoo County	Feb'y 14, "	Vicksburg	149	149	28, 670 58
					5, 114	4, 812	925, 925 04

And upon the foregoing findings of fact, the court decides the following as its—

CONCLUSIONS OF LAW.

1. The counsel for the Government not having taken steps to consolidate suits where the parties were seeking to recover the proceeds of

their property out of a common fund, the court would have been compelled to try the cases separately, and render judgment in each without charging each with a conjectural proportion of the general losses to which the fund might have been subjected. It appearing to the court that, at the rate claimants have been recovering, the funds would be exhausted before all of the judgments likely to be recovered were satisfied, and that the resulting consequence would be either that the later judgments would remain unsatisfied or that the Government would be required to satisfy them from other sources, the court was warranted, for the ultimate protection of the Government and of such later claimants, in suspending proceedings in all of the cases before it, and sending them to a commissioner, who, as an accountant, would marshal the assets of the property, and charge it with the proper losses, so that equal and exact justice should be done to all. As to the title of the claimants and their rights to the proceeds, the court has determined them upon the evidence irrespective of the commissioner's report, wherever requested so to do by either the claimant or the defendants. The first exception of the defendants to the reference of these cases to a commissioner is therefore overruled.

2. As to the Natchez and Vicksburgh cotton, it appears from the evidence that the parcels of different owners were intermingled before shipment, and that some of the shipments from the two points were subsequently intermingled. It being impossible to trace the specific property of each owner, and likewise impossible to determine whether his cotton remained in a shipment from the original point of shipment, or went into the intermingled shipments from different points, the whole must be thrown into a common mass, and the average thereof be the measure of damages for all who contributed thereto.

3. With regard to suits brought subsequent to the 20th day of August, 1868, to recover out of the funds now disposed of, the court has no jurisdiction to hear and determine them, and no reservation can be made from the fund to await the possibility of jurisdiction being hereafter conferred.

By the court.

25 In the Court of Claims.

HANNAH BODENHEIM, EXECUTRIX OF HENRY Bodenheim, deceased, *vs.* THE UNITED STATES. } Nos. 3354 and 3480.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal as filed in the clerk's office August 19, 1875, and of the order of the chief-justice of said court allowing the same; of the order of the court made May 24, 1875; of the findings of fact by the court and the conclusions of law thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this twenty-fourth day of January, A. D. 1876.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 924. The United States, appellants, *vs.* Hannah Bodenheim, extx. of Henry Bodenheim, dec'd. Court of Claims. Filed 2d February, 1876.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1875.

No. 908.	THE	UNITED	STATES,	APPT.,	vs.	JNO. B. RAYMOND, ASSIGNEE, &C.
911.	"	"	"	"	"	THOMAS KIDD.
912.	"	"	"	"	"	J. J. COWAN, ADMR., &C.
913.	"	"	"	"	"	J. B. BRABSTON.
914.	"	"	"	"	"	CHARLOTTE SPEAR.
915.	"	"	"	"	"	E. K. McLEAN.
916.	"	"	"	"	"	J. REESE COOK.
917.	"	"	"	"	"	ELLEN D. BATCHELOR.
918.	"	"	"	"	"	GEORGE HAWKINS.
919.	"	"	"	"	"	J. J. COWAN, ADMR., &C.
921.	"	"	"	"	"	ROBERT G. JOHNSON.
922.	"	"	"	"	"	WM. F. SMITH.
924.	"	"	"	"	"	HANNAH BODENHEIM.

APPEALS FROM THE COURT OF CLAIMS.

On consideration of the motion of counsel for the appellees, it is ordered & directed that the several records in the above-named cases be remanded to the Court of Claims, with directions to said court to certify in each of said cases, to wit:

1st. Whether the cotton owned by these respective claimants, and seized from them by the United States, did or did not constitute a part of the cotton delivered to and received by the Treasury agent of the United States at Vicksburg, Miss., during the years 1863 and 1864, and whether or not the same was there intermingled with other cotton, belonging to other persons, so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized.

2nd. Whether the proceeds of the sales of the various lots of cotton, owned by and seized from the respective appellees in these cases, do or do not constitute a part of the fund found to be in the Treasury of the United States, accruing from the sales of the said intermingled mass of cotton, so shipped from Vicksburg, Miss., during said years 1863 and 1864, and which was sold at Cincinnati & St. Louis, for and on behalf of the United States.

And that the said Court of Claims make due return in the premises.

28 March, 1876.

True copy.

[SEAL.] Test:

D. W. MIDDLETON,
Clerk Sup. Court U. S.

their property out of a common fund, the court would have been compelled to try the cases separately, and render judgment in each without charging each with a conjectural proportion of the general losses to which the fund might have been subjected. It appearing to the court that, at the rate claimants have been recovering, the funds would be exhausted before all of the judgments likely to be recovered were satisfied, and that the resulting consequence would be either that the later judgments would remain unsatisfied or that the Government would be required to satisfy them from other sources, the court was warranted, for the ultimate protection of the Government and of such later claimants, in suspending proceedings in all of the cases before it, and sending them to a commissioner, who, as an accountant, would marshal the assets of the property, and charge it with the proper losses, so that equal and exact justice should be done to all. As to the title of the claimants and their rights to the proceeds, the court has determined them upon the evidence irrespective of the commissioner's report, wherever requested so to do by either the claimant or the defendants. The first exception of the defendants to the reference of these cases to a commissioner is therefore overruled.

2. As to the Natchez and Vicksburgh cotton, it appears from the evidence that the parcels of different owners were intermingled before shipment, and that some of the shipments from the two points were subsequently intermingled. It being impossible to trace the specific property of each owner, and likewise impossible to determine whether his cotton remained in a shipment from the original point of shipment, or went into the intermingled shipments from different points, the whole must be thrown into a common mass, and the average thereof be the measure of damages for all who contributed thereto.

3. With regard to suits brought subsequent to the 20th day of August, 1868, to recover out of the funds now disposed of, the court has no jurisdiction to hear and determine them, and no reservation can be made from the fund to await the possibility of jurisdiction being hereafter conferred.

By the court.

25 In the Court of Claims.

HANNAH BODENHEIM, EXECUTRIX OF HENRY Bodenheim, deceased, *vs.* THE UNITED STATES. } Nos. 3354 and 3480.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal as filed in the clerk's office August 19, 1875, and of the order of the chief-justice of said court allowing the same; of the order of the court made May 24, 1875; of the findings of fact by the court and the conclusions of law thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this twenty-fourth day of January, A. D. 1876.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 924. The United States, appellants, *vs.* Hannah Bodenheim, extx. of Henry Bodenheim, dec'd. Court of Claims. Filed 2d February, 1876.

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918.	"	"	"	"	GEORGE HAWKINS.
919.	"	"	"	"	J. J. COWAN, ADMR., &C.
921.	"	"	"	"	ROBERT G. JOHNSON.
922.	"	"	"	"	WM. F. SMITH.
924.	"	"	"	"	HANNAH BODENHEIM.

APPEALS FROM THE COURT OF CLAIMS.

On consideration of the motion of counsel for the appellees, it is ordered & directed that the several records in the above-named cases be remanded to the Court of Claims, with directions to said court to certify in each of said cases, to wit:

1st. Whether the cotton owned by these respective claimants, and seized from them by the United States, did or did not constitute a part of the cotton delivered to and received by the Treasury agent of the United States at Vicksburg, Miss., during the years 1863 and 1864, and whether or not the same was there intermingled with other cotton, belonging to other persons, so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized.

2nd. Whether the proceeds of the sales of the various lots of cotton, owned by and seized from the respective appellees in these cases, do or do not constitute a part of the fund found to be in the Treasury of the United States, accruing from the sales of the said intermingled mass of cotton, so shipped from Vicksburg, Miss., during said years 1863 and 1864, and which was sold at Cincinnati & St. Louis, for and on behalf of the United States.

And that the said Court of Claims make due return in the premises.

28 March, 1876.

True copy.

[SEAL.] Test:

D. W. MIDDLETON,
Clerk Sup. Court U. S.

HENRY BODENHEIM
vs.
THE UNITED STATES.

Supplemental findings of fact.

The Court of Claims, pursuant to the order of the Supreme Court made March 28th, 1876, requiring this court to make and certify as to certain facts in this case, does now make and certify to the Supreme Court the following supplemental facts:

First. And in response to the instructions of the Supreme Court to find "whether the cotton owned by the claimant and seized from him by the United States, did or did not constitute a part of the cotton delivered to and received by the Treasury agent at Vicksburg, Miss., during the years 1863 and 1864," the Court of Claims finds as follows:

The cotton owned by the claimant, and seized from him by the United States, was transported down the Yazoo River to Vicksburg by the military expedition under the command of Colonel Coates, of the 11th Illinois Volunteers, as detailed in the previous findings. It is not specifically traced by the evidence to the official custody of the Treasury agent at Vicksburg, nor to the official custody of any military officer,
2 and from the circumstances attending its seizure and shipment, it cannot be so traced by the claimant.

But the Treasury agent at Vicksburg received a large quantity of cotton, captured by the Coates expedition, belonging to unknown persons, and neither the loss of the claimant's cotton nor its shipment to any other point is shown by the defendants. The Court of Claims upon the facts, and the presumption therefrom arising, finds, though without there being direct proof of the ultimate fact, that the cotton owned by the claimant constituted a part of the cotton received by the Treasury agent at Vicksburg, and contributed to the fund set fort' in the commissioner's report which forms a part of the previous findings of this court.

Second. And in response to the instructions of the Supreme Court to find "whether or not the same was there intermingled with other cotton belonging to other persons so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized," the Court of Claims finds a' follows:

The cotton so seized was intermingled with other cotton, belonging to other persons, immediately after capture and before ship-
3 ment, so as to destroy the identity of the several lots, and the various shipments from different points were subsequently intermingled in whole or in part at Vicksburg, so that it is impossible to determine whether the cotton of any owner remained in a shipment from the original point or went into intermingled shipments from different points; and it is likewise impossible to ascertain the specific rate at which he should recover except by throwing the whole into a common mass, as has been done in the report of the commissioner forming part of the previous findings of this court.

Third. And in response to the instructions of the Supreme Court to find "whether the proceeds of the sales of the cotton owned by and seized from the claimant in this case do or do not constitute a part of the fund found to be in the Treasury of the United States, accruing from

the sales of the said intermingled mass of cotton so shipped from Vicksburg, Miss., during said years 1863 and 1864, and which was sold at Cincinnati and St. Louis for and on behalf of the United States," the Court of Claims finds as follows:

There is no direct evidence to show that the claimant's cotton continued in or was separated from the mass of intermingled cotton
4 at Vicksburg, but the whole of said mass was shipped from there and was sold at St. Louis and Cincinnati, less certain losses of unidentified cotton with which the fund has been duly charged; and on these facts, and the presumptions therefrom arising, but without direct proof of the ultimate fact, the court finds that the proceeds of the sales of the claimant's cotton do constitute a part of the fund found to be in the Treasury, accruing from the sales of the intermingled mass of cotton so shipped from Vicksburg and sold at St. Louis and Cincinnati, more particularly set forth and described in the report of the commissioner which forms a part of the previous findings of this court.

In the Court of Claims, December term, 1875.

John B. Raymond, assignee, &c.,	v.	The United States.
Thomas Kidd	vs.	Same.
J. J. Cowan, admr. of Sarah Cowan,	"	Same.
J. B. Brabston	"	Same.
Charlotte Spear	"	Same.
E. K. McLean	"	Same.
J. Reese Cook	"	Same.
Ellen D. Batcheler	"	Same.
George Hawkins	"	Same.
J. J. Cowan, admr. of John Cowan	"	Same.
Robert G. Johnson	"	Same.
William F. Smith	"	Same.
Hannah Bodenhiem	"	Same.

The Court of Claims, in obedience to the order of the Supreme Court of the United States hereunto annexed and returned, makes these its supplemental findings of fact in each of the causes aforesaid.

In testimony whereof I hereunto set my hand and affix the seal of said Court of Claims this 3rd day of April, 1876.

JOHN RANDOLPH,
Asst. Clk. Court of Claims.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 924.

THE UNITED STATES, APPELLANTS,

vs.

HANNAH BODENHEIM, EXECUTRIX OF HENRY BODENHEIM, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

Statement of the Case.

Henry Bodenheim filed his petition as sole surviving partner of the firm of Henry Bodenheim & Co., (which firm consisted of Henry Bodenheim, Jonas Bodenheim, & Judon Loeb,) for the proceeds of one hundred and eighty-three bales of cotton, the property of said firm, the same having been purchased by the agent of said firm in 1863, from Robert G. Johnson and Dr. Thomas Gale, in the county of Yazoo, in the State of Mississippi; 147 bales thereof were stored on the plantation of said Johnson, and 36 bales thereof were stored on the plantation of said Dr. Gale.

In February, 1864, an expedition under the command of Col. James H. Coats, of the eleventh Illinois Infantry, seized said cotton, and shipped it to Vicksburg, Miss., where it was turned over to an assistant quartermaster of the army, and by him it was turned over to a United States Treasury Agent and sold, and the proceeds paid into the Treasury.

The death of Henry Bodenheim was suggested in May, 1875, and the action revived in the name of his executrix, Hannah Bodenheim, the appellee.

FINDINGS OF FACTS.

The Court of Claims, in this case, made the following Findings of Facts:

1. That ninety of the bales of said cotton were in the ownership of Henry Bodenheim & Co., on the plantations of Robert G. Johnson and Thomas Gale, in Yazoo county, Miss., in the month of February, 1864.

(See page 13 and Exhibit 10, p. 17.)

2. That an expedition under command of Col. James H. Coates, eleventh Illinois Infantry, seized ninety bales of cotton belonging to Henry Bodenheim & Co.

(See page 13.)

3. That the said cotton was the property of the said firm:

(See page 13.)

4. That after its seizure it was transported to Vicksburg, and turned over to an assistant quartermaster of the army.

(See page 13.)

5. The said Court found further, that the cotton owned by the claimant, constituted a part of the cotton received by the Treasury Agents at Vicksburg, and that it contributed to the fund set forth in the Commissioner's Report, which was part of the previous findings of said Court:

(See page 1 of Supplemental Findings.)

6. That the cotton, so seized, was intermingled with other cotton belonging to other persons immediately after the capture thereof, and before its shipment, so that its *specific* identity was destroyed:

(See page 1 of Supplemental Findings.)

7. That the proceeds of the sale of claimant's cotton do constitute a part of the fund accruing from the sales of the intermingled mass of cotton so shipped from Vicksburg, and afterwards sold at St. Louis and Cincinnati, the proceeds of which were deposited in the Treasury:

(See page 2 of Supplemental Findings.)

FINDING OF LAW BY THE COURT OF CLAIMS.

From the above-stated Findings of Facts, the Court of Claims deduced the conclusion of law, that the claimant is entitled to judgment for (90) ninety bales of cotton, at the average rate per bale, payable out of what is known as the First Fund, making for one hundred and forty-nine bales of cotton, at $177.50 per bale, the sum of $15,975.00.

POINTS IN ARGUMENT.

1. Claimant's possession and ownership of the cotton in controversy distinctly found by the Court of Claims, as an ultimate deduction from the evidence adduced.

2. Seizure of the same from plaintiff's possession alike clearly found.

3. The transportation of the said cotton to Vicksburg, its delivery there to Treasury agents of the Government, its subsequent sale, and the depositing of the proceeds of the said sale in the Treasury Department were found also to be established in proof, entitling plaintiff (the present appellee) to the sum of fifteen thousand nine hundred and seventy-five dollars.

Upon this presentation of the case, there would seem to be no room for extended argument or copious adduction of authorities.

BARTLEY & JENNER,
Counsel for Appellee.

40 N.Y. 484
Smith
Lord
Allison, v

In the Supreme Court of the United States.

October Term, A. D. 1875.

No. 908. The United States, Appt., vs. John B. Raymond, Assignee, &c.
No. 911. " " " vs. Thomas Kidd.
No. 912. " " " vs. J. J. Cowan, Adm'r, &c.
No. 913. " " " vs. J. B. Brabston.
No. 914. " " " vs. Charlotte Spear.
No. 915. " " " vs. E. K. McLean.
No. 916. " " " vs. J. Reese Cook.
No. 917. " " " vs. Ellen D. Batchelor.
No. 918. " " " vs. George Hawkins.
No. 919. " " " vs. J. J. Cowan, Adm'r, &c.
No. 924. " " " vs. Hannah Bodenheim, Ex'r, &c.
No. 922. " " " vs. Wm. F. Smith.

Appeals from the Judgment of the Court of Claims, in each of said several causes.

Brief for Appellees.

As these several cases belong to a class of cases, appealed for the settlement of questions similar and common to all, this brief is submitted, on behalf of the Appellee, in each of the cases.

The peculiarity of these cases arises from the circumstance that the cotton of each claimant became intermin-

gled with the cotton of numerous other persons, so that its identity was lost, and it could not be *specifically traced* and its proceeds distinguished from those of the mass of the other cotton with which it was confused. The rule of law, therefore, governing the change which the right of personal property undergoes by the confusion of the goods of two or more persons, applies here. By the rule of the common law, where one owner intermingled his own goods with those of another, wilfully and without the consent of the latter, the entire property so intermingled became that of him whose property was invaded, and its distinctive character destroyed. But with respect to the confusion of goods by accident or otherwise, without the fault or consent of either owner, where the intermixture is such that the goods of neither can be distinguished, each of the owners becomes entitled to an equal or *pro rata* interest in the confused mass as tenants in common. See 2 Kent's Com., 364 and 365, and the notes of reference to the English and American decisions sustaining this doctrine.

In the recent findings of the facts, the Court of Claims, in response to the second instruction of the Supreme Court, has found as follows:

"The cotton so seized was intermingled with other cotton belonging to other persons *immediately after capture and before shipment*, so as to destroy the identity of the several lots; and the various shipments from different points were subsequently intermingled in whole or in part at Vicksburg, so that it is impossible to determine whether the cotton of any owner remained in a shipment from the original point or went into intermingled shipments from different points; and it is likewise impossible to ascertain the specific rate at which he should recover except by throwing the whole into a common mass, as has been done in the report of the commissioner forming part of the previous findings of the court."

After the admixture of the mass of cotton taken from the numerous owners with whose cotton that of each claimant in said cases became confused, the whole mass of

this intermingled cotton became exposed to various perils in the military operations at and about Vicksburg, whereby a portion of it was lost and destroyed; but the cotton having become intermingled so that the rights of each owner to his *specific* cotton having become changed into a common *pro rata* right in the confused mass, the loss had to be borne by each proprietor, in the proportion in which his cotton had contributed originally to the common mass.

It is argued on the other side, that although the Court of Claims found, "that the cotton owned by the claimant constituted a part of the cotton received by the Treasury agent at Vicksburg, and contributed to the fund set forth in the commissioner's report" and found to be in the Treasury, yet that this was found by the Court of Claims "upon facts, and the presumptions therefrom arising, though without there being *direct* proof of the ultimate fact," and that, therefore, the finding was erroneous and insufficient.

In these cases, however, the Court of Claims found the *ultimate fact* partly upon direct proof, and partly *upon presumptive* or *circumstantial* proof. And that Court has *not* placed the findings *in any part* upon the ground of any *presumption of law;* but partly upon the ground of presumptions or inferences of fact, drawn from circumstances. If the findings of the Court of Claims had been, in whole or in part, founded on a *presumption of law* arising from a particular fact, or state of facts, then, this Court could review the decision on the question of law. But where the finding is founded on simple questions of fact, or presumptions or inferences from circumstancial evidence, this Court cannot review the decision, without going into a consideration and adjudication upon *the weight* of the evidence.

The case of Thomas Kidd, No. 911, has heretofore been selected by the Attorney-General as a representa-

tive case, in this discussion. I will, therefore, take that case as an example, noticing incidentally at times the shades of difference in the facts between this and some of the other cases. The recent findings of fact by the Court of Claims appear to be "supplemental," and in addition to, and "a part of, the previous findings of the Court." The view here presented is submitted for consideration, *in case* this Court shall consider the statements of the evidence, as given in the findings of the ultimate facts by the Court of Claims, at all material.

In the case of the claimant, Thomas Kidd, the findings of fact by the Court of Claims, (taking the original in connection with the supplemental findings,) are as follows: "The claimant owned and had in his possession five hundred bales of cotton in May, 1863, which was seized from him *by the United States*, and carried away from his plantation a few miles from Vicksburg, *under guard* in Government wagons, to the headquarters of General Osterhaus at Big Black Bridge. Afterwards, in June, 1863, it was transported in Army wagons, in charge of United States soldiers, *toward* Vicksburg."

It is a matter of public history, that the siege of Vicksburg commenced on the 18th day of May, 1863, and closed with the surrender of the city on the 4th of July; and that General Osterhaus, a major-general, commanding a division of the United States Army, participated in that siege. The claimant's *ownership* of the cotton, and *the seizure* of it by the United States Army, and the fact that, "the cotton so seized was intermingled with other cotton belonging to other persons *immediately after capture* and before shipment, so as to destroy the identity of the several lots," are shown by *direct evidence*, and admit of no controversy.

It is also a matter of public history, that the confederate fortifications for the defence of Vicksburg were about two miles from the city, and that the federal fortifications of the Union Army engaged in the siege were

about four or five miles from the city. And the whole country from Big Black Bridge to the fortifications of the United States Army besieging the city, was under the actual control and in the actual occupation of the United States Army; so that General Osterhaus actually engaged, and participating in the siege, had his headquarters at Big Black Bridge, for a time at least, as it appears in the findings of facts by the Court of Claims.

The finding that the cotton was "seized by the *United States*," or *the* "*United States Army*," and transported on Government wagons under military guard, is conclusive that it was seized by and under the charge of the proper authority of the United States. While it remained at Gen. Osterhaus's headquarters it was not only within the lines of the United States Army, but under the direct and immediate authority of a major general, who had, of course, his chief quartermaster and assistant quartermasters in charge of all public property within his possession and control. And when "it was transported on Army wagons, in charge of United States soldiers, towards Vicksburg," it was, of course, under the immediate authority of the Army of the United States, commanded by Gen. Osterhaus. It was transported *not away from Vicksburg*, but "*toward* Vicksburg," where it was required for use for the time being in the breastworks or fortifications of the besieging Army. One of the arguments on the other side is, that the cotton was seized for military uses during the siege. The inference is irresistable, that when the cotton was "transported *toward Vicksburg*" during the siege, it was taken to the fortifications where it was needed for immediate and temporary military purposes. There was no occasion here to resort to any *presumption of law*, that the military force or military officers had performed their duty. The attending and surrounding circumstances furnish the inferences or *presumptions of fact*, that the large amount of cotton, which had been stored or piled up at Gen. Osterhaus's headquarters, when taken therefrom and

transported *toward* Vicksburg, was taken to the fortifications, where it was needed and used during the siege. If so large an amount of cotton, on military wagons, moving towards Vicksburg, in charge of United States soldiers under command of General Osterhaus, had been then and there within the very lines of the Army, and so near the breastworks of the besieging forces, stolen or destroyed, it would have been so unusual and remarkable a circumstance as could not have escaped public notice. At least the attending circumstances are sufficient to show *prima facie*, that the cotton reached the fortifications, or place within the sphere of the military operations where it was needed for temporary use.

The *onus probandi* here is not thrown on the other side by any presumption of law, but the inferences and presumptions of fact, arising from the attending and surrounding circumstances, are such as to lead to the fair and rational conclusion, that this cotton reached the fortifications of the besieging forces. And in the original findings of fact, (see p. — of the original record,) we have this, "A very large quantity of captured cotton was used by the Army of the United States for defensive purposes in the vicinity of Vicksburg. After the surrender of Vicksburg, this cotton, or as much of it as could be saved, was collected and transported to Vicksburg." And in the supplemental findings, the Court of Claims added, "The Treasury agent at Vicksburg received a very large quantity of cotton captured by General Osterhaus, belonging to unknown persons, and neither the loss of the claimant's cotton, nor its shipment to any other point, is shown by the defendants."

Giving due weight to the inferences and presumptions of fact arising from the circumstances, the Court of Claims found the ultimate fact, that the claimant's cotton constitu ted a part of the cotton received by the Treasury agent at Vicksburg, and contributed to the fund found to be in the Treasury.

It is true, the Court of Claims say, in the supplemental findings, as to the claimant's *specific cotton* seized and taken from him, "That it is not *specifically* traced by the evidence to the official custody of the Treasury agent at Vicksburg, nor to the official custody of any military officer, and from the circumstances attending its seizure and shipment, it cannot be so traced. Of course the identical cotton of the claimant could not be *specifically* traced, because "it was intermingled with other cotton *immediately after capture*, so as to destroy the identity of the several lots," &c. This admixture commenced as the cotton was loaded on the wagons, and transported to General Osterhaus' headquarters, where it was unloaded with a mass of other cotton. And it was still further confused when it was again loaded on army wagons, and transported to the military fortifications of the army engaged in the siege. But the mass of confused cotton with which claimant's cotton was intermingled, is expressly traced to the Treasury agent at Vicksburg, and is found to have contributed to the fund in the Treasury.

To reject circumstantial proof, and require of a claimant *direct* and *positive* evidence tracing his cotton after it came within the military lines of an army engaged in a siege or a battle, would be to require of him an impossibility. The claimant Kidd could not be permitted to follow his cotton, nor send an agent to follow it, to see what became of it after it came within the military lines of the army engaged in the siege.

The position urged by the counsel on the other side, would place the Government in a very discreditable position. According to their position, the United States, after the date of the captured and abandoned property act, seized a large amount of cotton belonging to private citizens, and without receipting for it to the owners, or keeping any descriptive account of it, confused it with the cotton of many other persons, and transported it within the lines of the army engaged in a battle and siege, where the

owners could not follow it or trace it, and after the siege delivered the cotton to the Treasury agents in this confused mass, by whom it was sold and the proceeds paid into the Treasury; and after all this, saying to the owners, it is true, we took your property and confused it with the property of many other persons, and took it within the lines of our army engaged in a battle where you could not trace or follow it, and although we have the proceeds of its sale in the Treasury, you shall not recover your money unless you prove an impossibility, and show the proceeds of your identical cotton in the Treasury. Is this the spirit of the captured and abandoned property act? Is this the kind of justice afforded by the Government of an enlightened and christian people?

It would be more manly and truthful to say, we had *the power* to take and deprive you of your property, and because we had the power we have the right.

The counsel for the United States have much to say about the Silvey and the Crussell cases. There is no fair analogy whatever between either of those cases, and the present cases. In neither of those cases did the Court of Claims find the money in the Treasury by the weight of the evidence direct or circumstantial. Both of those cases depended on a presumption of law, which does not arise in the cases now before the Court, yet the claimants recovered their money. In neither of those cases was the cotton of the claimant traced to an inseparable confusion with a mass of other cotton, the whole of which was traced to a Treasury agent, and the proceeds of it into the Treasury. But here are marshalled the proceeds of the cotton of a large number of people which had been inseparably intermingled by the act of the Government, and the amount or extent to which the cotton of each owner contributed to the common fund, ascertained, and found to be in the Treasury.

A part, and indeed a large number of the claimants of a *pro rata* interest in this confused fund, have already re-

covered and obtained their money upon the same grounds substantially which are now presented; and many of them have recovered without deduction for the losses in the cotton. So that the aggregate of the losses in the quantity of the cotton siezed, have been deducted from the balance in the Treasury, reducing the amount of the recovery of these claimants nearly one-third.

T. W. BARTLEY,

Of Counsel for the Appellees.

Dec 27.

Judge Wait

2-657

Supreme Court of the U. S.

UNITED STATES,
vs.
R. G. JOHNSON. } No. 921.

FROM THE COURT OF CLAIMS.

Brief of P. Phillips,

FOR APPELLEE.

The motion made to substitute A. F. Gardner, assignee in bankruptcy of R. G. Johnson, as appellee, is met with the suggestion of opposing counsel, that the case falls within the 5057 sec. R. S., which provides a limitation of two years for *suits* between an *assignee* and a person claiming an *adverse interest.*

It needs no argument to show that this has no application to the present motion. In the first place, this is not a suit commenced by the assignee, but the continuance of a proceeding already in existence.

Again, the application is not to assert an "adverse interest," but to represent by the proper party the bankrupt,s own interest, which by operation of law, is vested in his assignee.

The subject of the suit is cotton captured during the war.

The war being waged against citizens of the United States, and therefore of an exceptional character, Congress early recognised the propriety of dealing with it not according to the ordinary rules of war, but by special legislation.

This special legislation constitutes the rule for the government of all courts in all cases to which it applies.

When, therefore, a case arises under that legislation, there is no room for the general rule of warfare.

This is illustrated in the case of Planter's Bank vs. Union Bank, 16 Wall, 496, where an order of General Banks, made while the war was flagrant, requiring a debtor bank to pay over to him certain monies due to parties in rebellious States, was relied on.

The court say: "It is of no importance to enquire what under the general laws of war are the rights of a conqueror, for the government asserted no general right in virtue of conquest, &c.

The act of 1861 and 1862, declaring that private property belonging to certain classes of persons might be confiscated in the manner described, are themselves expressive of an intent that the rights of conquest should not be exercised, except in the cases mentioned, and in the manner pointed out."

But Congress did not stop here. Well recognizing that in the operations of the war property would be captured from citizens who had never abjured their allegiance, but by force of circumstances were involved in a resistance to the government, they passed the act of 1863.

This act required all such captured property to be sold, and the proceeds paid into the Treasury, there to be held subject to the claim of loyal citizens, who were allowed two years after the close of the rebellion, to assert their proprietorship.

Whatever interest the claimant had in the thing captured, whether partial or entire, and however that interest might be designated, that was the interest which the law secured, so that, no injustice should be done by the result of a warfare for which the claimant was in no wise responsible.

This court has fully recognized the beneficence and justice of this act, and has accordingly held that the capture works no change of proprietorship, and the government holds the proceeds in trust in the same manner as it would hold the property in specie.

The court has gone further, and holds that this trust is not only for those who in two years proved their loyalty, but also for those who under the various proclamations received pardon and amnesty.

These proclamations emanated, some from motives of policy for the purpose of weakening the enemy—others at the close of the rebellion from motives of clemency, and in the interest of harmony.

In order to facilitate the proper execution of this act, and for the protection of claimants, it is provided, that proper accounts and books should be kept by the Treasury Agents to whom, under severe penalties, all captured property was to be delivered, so that at the close of the war the property of each claimant might be readily designated.

We now proceed to the enquiry, whether the judgment rendered under the act of 1863, in favor of the claimant is erroneous. In other words whether the facts found by the court justify the judgment.

This court was authorized to determine the rules by which the judgments of the Court of Claims were to be revised.

The rules adopted, make their finding of the facts conclusive on appeal. They constitute the jury for trial of the facts.

The conclusions of law are required to be separately certified. When the case is heard on appeal, these conclusions of law are alone reviewable; with the sufficiency of the evidence on which the court find the facts, we have in in this tribunal no concern, and therefore, the evidence forms no part of the record now before us.

What then are the facts found by the court?

In the report of the Commissioner on this and several other claimants to the fund in the Treasury, *Ib.* p. 11, this claim is thus stated.

"The proof shows that on 14 Feb'y, 1864, the plaintiff owned and had on his plantation, in Yazoo County, Miss., 149 bales of cotton, which on that day was captured by the military expedition, under the command of Col. Coates, 11th Illinois regiment of infantry; said cotton was transported down the Yazoo river to Vicksburg, where it became intermingled with the mass of cotton collected at that point, and lost its identity."

This finding is adopted by the court in the following terms: "As to the title of the claimants, and their rights to the proceeds, the court has determined them upon the evidence, irrespective of the Commissioners' Report, wherever requested so to do by either the claimant or defendant."

Subsequent to the filing of the record, this court directed the Court of Claims to certify its answer to two questions—

1st. Whether the cotton constituted a part of that which was delivered to the Treasury agent at Vicksburg, in 1863 and 1864, and was there so intermingled as to destroy its identity.

2d. Whether the cotton claimed by the appellees constituted a part of the fund in the Treasury, accruing from the sale of the intermingled mass shipped from Vicksburg, in 1863 and 1864, and sold at Cincinnati and St. Louis.

The return of the court in this case is as follows:

"The cotton owned by the claimant, and seized from him was transported down the Yazoo river by the military expedition, under the command of Col. Coates, as detailed in the previous finding. It is not specifically traced by the evidence to the official custody of the Treasury agent at Vicksburg, nor to the official custody of any military officer; and from the circumstances attending the seizure and shipment, it cannot be so traced by the claimant.

But the Treasury agent at Vicksburg, received a large quantity of cotton captured by the Coates' expedition, belonging to unknown persons, but neither the loss of the claimant's cotton, nor its shipment to any other point is shown by defendant. The Court of Claims *upon the facts and presumptions arising therefrom* finds, though without there being *direct proof* of the ultimate fact, that the *cotton owned by the claimant constituted a part of the cotton received by the Treasury agent at Vicksburg, and contributed to the fund set forth in the Commissioners' Report, which forms a part of the previous findings.*"

The court then finds that this cotton was so intermingled as to destroy its identity.

The amount of the fund found to be in the Treasury derived from the sale of this mingled mass of cotton sent from Vicksburg, after making deduction for all the judgments theretofore rendered, leaves a remainder of $948,313.30. (p. 11.)

This is the sum which has been distributed among all the other claimants to this fund, at the reduced average per bale of $177.55.

The facts thus found are conclusive of the case, without it can be maintained that the court was not authorized to find a fact without "direct proof."

The court had its judgment satisfied from all the circumstances of the case, though they say this was "without direct proof."

Does the insertion of these words destroy the validity of their finding?

The conscience of the court acting as a jury must be guided by *satisfactory* evidence. This is sometimes termed *sufficient evidence*—that is, the amount of proof which ordinarily satisfies an unprejudiced mind beyond reasonable doubt. The circumstances which will amount to this degree of proof can never be previously defined. The only legal test of which they are susceptible is their sufficiency to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern to his own interest.

In trials of fact, the *factum probandum* is either directly attested by those who speak from personal knowledge, or is to be inferred from other facts satisfactorily proved.

The facts proved are in both cases directly attested.

In the former case the proof applies immediately to the *factum probandum*, without any intervening process, and is, therefore, called *direct* or *positive* testimony.

In the latter case, as the proof applies immediately to collateral facts supposed to have a connection near or re-

mote with the fact in controversy, it is termed circumstantial, and sometimes, but not with entire accuracy, *presumptive.*

1 Greenleaf Ev.

We are not now dealing with the question respecting the *competency* or admissibility of evidence. This is entirely distinct from the question of *sufficiency or effect.* The former belongs to the court exclusively; the latter, as exclusively to the jury.

As the jury in this case has found the fact, their verdict is conclusive, though it is stated it was found "without direct evidence."

An objection has been much urged against what has been stigmatized as the "machinery" used by the court to aid its determination of the controversy, arising out of the many claimants to this fund, and much criticism has been made on the statement by the court, that "the title of the claimants and their right to the proceeds have been determined upon evidence irrespective of the commissioner's report, *whenever requested so to do by either the claimant or defendant.*"

We must apply the ordinary rules which govern in the trial of cases in all other courts.

The government is represented fully in the Court of Claims.

The commissioner was employed to collate the evidence and to make report. He did so, by reporting the facts as shown by the evidence.

Now, if the facts as reported by him were not justified by the evidence, this constituted a just ground of exception to the confirmation of the report, and it was the duty of the government to make it.

If the report is justified by the evidence there is no ground to object, that the truth cannot be acted on because a commissioner was authorized to ascertain it.

This more especially when the court says to the defendant if you are not satisfied with the statement of the evidence as made by the commissioner, we will take up the evidence and examine it for ourselves.

It is rather late to object in this court, as to the *correctness* of the report.

The right to appoint this aid to the court is one which has been used time out of mind.

It is said, to sustain the objection, that the representative of the government could not by silence or consent give the court jurisdiction.

Grant this—and yet we do not see its application.

If a claimant below should offer secondary evidence of a fact and the attorney-general should agree that the court should receive it, we do not suppose that this could here be assigned for error on the ground that consent could not confer jurisdiction; nor indeed on any other ground.

There is but one doubt that can be legitimately raised in this case, and that is, whether a recovery can be had where the party is unable to show by the treasury books, proceeds of his specific lot of cotton.

We go to the extent of candor when we describe this, even as a doubt.

Let us assume that the cotton of A, B & C, was seized and delivered to the Treasury agent at Vicksburg.

That this collection of cotton was sold and the proceeds paid into the Treasury.

That though the time allowed by law to file claims to this fund has expired, no other persons have appeared to claim but A, B & C.

On these admissions we submit that the trustee of this fund would appear in a court of justice with ill grace in

presenting the objection that parties ought not to be entitled to recover, because the agents employed to collect the property had, through accident or neglect, omitted, in making their return, to designate and separate the interest of each party.

In conclusion, we may say that the law, in allowing the Court of Claims finally to pass upon the facts of a case, places the interest of the Government in no jeopardy.

This is a statutory court, sitting under the eye of Congress, and the most reasonable objection to its creation was founded on the apprehension, that in its decisions it would be strongly influenced by the power that created it, and on which it depended for its existence.

Whether this apprehension was well founded or not, certain it is that there is no interest or influence exerted on the court in behalf of claimants.

For ourselves, we believe that the court has held the scales of justice with a steady hand, and that it will continue to increase the confidence which it has already inspired.

P. PHILLIPS,
for Assignee in Bankruptcy.